SUPREME COURT OF THE UNITED STATES

No. 302.

MARIANO CASTRO, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 302.

MARIANO CASTRO, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Minutes of proceedings of commissioners	1	1
Petition	1	2
Deposition of Antonio Sunol	2	2
Deposition of Jose Fernandez	5	5
Map	5	5
Deposition of Antonio Ma. Pico	6	6
Deposition of Antonio Sunol	8	7
Stipulation	9	8
Document "H. I. T., No. 1," to deposition of Antonio Sunol	9	9
Document "H. I. T., No. 2," to deposition of Antonio Sunol	11	10
Translation "H. I. T., No. 2," to deposition of Antonio Sunol	11	11
Certificate	12	11
"B," translation of the grant, "Doc. H. I. T. No. 1, to deposition of Antonio Sunol."	12	12
"B," from No. 90	14	13
Translation of Espediente "B," from No. 90	17	16
Opinion of the board by Commissioner Thompson Campbell	20	18
Decree of confirmation	21	20
Secretary's certificate	22	20
Appeal notice	23	21
Petition	23	21
Stipulation and order	24	22
Answer	24	22
Stipulation and certified copy of deposition of Antonio Sunol	24	23
Map	27	25

INDEX.

	Original.	Print.
Copy of deposition of William J. Lewis, and stipulation to admit same	28	26
Order to revive in name of M. T. P. de Castro, ex., &c., as appellee	30	27
Deposition of L. B. Healey	30	28
Map	33	30
Deposition of Edward Dale	33	30
Deposition of William D. Boone	33	31
Opinion of Hon. Ogden Hoffman confirming claim	35	32
Decree	39	35
Order granting appeal	40	36
Clerk's certificate	40	37
Map	40	37

THE UNITED STATES
v.
CASTRO.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CAL'A.

Be it remembered, that on this thirty-first day of May, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Mariano Castro, for the place named———, was presented and ordered to be filed and docketed with No. 257, and as follows, to wit: (Vide page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *January* 14, 1853.

In case No. 257, Mariano Castro, for the place named "Refugio," etc., the deposition of Antonio Suñol, a witness in behalf of the claimant, taken before Commissioner Harry I. Thornton, with documents marked H. I. T., Nos. 1, 2, and 3, annexed thereto, was filed. (Vide page 4 of this transcript.)

SAN FRANCISCO, *January* 15, 1853.

In the same case, the deposition of Antonio Sunol, a witness in behalf of the claimant, taken before Commissioner Harry I. Thornton, was filed. (Vide page 12 of this transcript.)

In the same case, the deposition of Jose Fernandez, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed. (Vide page 8 of this transcript.)

SAN FRANCISCO, *January* 17, 1853.

In the same case, the deposition of Antonio Maria Pico, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed. (Vide page 10 of this transcript.)

SAN FRANCISCO, *September* 1, 1853.

Case No. 257 called. The counsel for the claimant read the evidence; argued, submitted, and taken under advisement by the board.

In the same case the counsel for the claimant filed the following stipulation, to wit: (Vide page 13 of this transcript.)

SAN FRANCISCO, *January* 24, 1854.

In the same case Commissioner Thompson Campbell delivered the opinion of the board confirming the claim. (Vide page 23 of this transcript.)

Petition.

Before the honorable the commission to ascertain and settle private land claims in California.

Mariano Castro, a citizen of said State, gives notice that he claims, by virtue of a grant from the Mexican nation, a tract of land situated in Santa Clara county, called the Rancho del Refugio, or Pas-
2 toria de Borregas, according to the boundaries described in the grant thereof, and the map or diseno accompanying the same, and more plainly shown in a certain plot or survey executed by the county surveyor of Santa Clara county in pursuance of an order of the honorable county court of said county, the 1st of October, A. D. 1850. The said land was granted on the 2d day of January, 1842, to Don Francisco Estrada by Don Juan B. Alvarado, constitutional governor of California, authorized to make such grant in the name and on behalf of the Mexican nation. On the day of in the year 1845, said grantee died intestate, without issue, whereby the land vested by operation of law in his father, the late Don Jose Mariano Estrada, who afterwards conveyed the same in fee to the present claimant. The said land was occupied and improved according to law. A copy of said grant is herewith filed, and the original will be produced and proved as may be required. The claimant relies on said documentary testimony, and on the papers relating to said grant existing in the archives of the former governments of California, and on such testimony of witnesses as he may obtain. The claimant further represents that for a portion of said granted land, one Ynigo, an Indian pupil of the mission of Santa Clara, made pretension in the year 1844; wherepon said grantee consented that a certain parcel should be set off to said Ynigo, and the same was sanctioned by the departmental government, as shown by the certificate and decree of Manuel Micheltorena, governor, endorsed on said grant. The piece of land so set off by said grantee and said decree of the government, is described in said decree and specifically shown in the plat of survey before-mentioned.

The claimant prays that the said claim may be speedily examined, recognized, and confirmed.

By his attorneys,

JONES, TOMPKINS & STRODE.

Filed in office May 31st, 1852.

GEO. FISHER, *Secretary.*

Deposition of Antonio Suñol.

SAN FRANCISCO, *Jan'y* 13, 1853.

On this day, before Com'r Harry I. Thornton, came Antonio Suñol, a witness in behalf of the claimant, Mariano Castro, petition No. 257, and was duly sworn, his evidence being interpreted by the secretary. The U. S. associate law agent was present.

Questions by claimant:

Question 1st. What is your name, age, and place of residence? and how long have you resided there?

3 Answer. My name is Antonio Suñol; my age is fifty-five years, and I reside in the town of San José, where I have lived thirty-three years.

Quest. 2. Are you acquainted with the handwriting of Juan B. Alvarado, Manuel Jimeno, José Mariana Estrada, Manuel Micheltorena? If yea, examine the document now here filed in Exhibit No. 1 to this deposition, and say whether the signature of the above-named persons, wherever they occur in and upon said document, are their genuine signatures.

Ans. I am acquainted with the handwriting of all the persons named in the above interrogatory, having seen them write. I have examined the document described, and say that their signatures, wherever they occur in and upon said document, are their genuine signatures.

Quest. 3. Examine the document now here shown to you and filed herewith, marked Exhibit No. 2, and say if the signature of José Mariano Estrada, where it appears on the said document, is his genuine signature?

Ans. It is the genuine signature of said Estrada where it is written on the said document as shown to me and marked as above mentioned.

Quest. 4. Were you acquainted with Francisco Estrada and his family? and if so, state when he died and who were his relations.

Ans. I was acquainted with Francisco Estrada and his family. I do not know when he died. I knew his father and mother and brothers and sisters, all of whom survived the said Francisco Estrada.

Quest. 5. Did Francisco Estrada leave any wife or children?

Ans. He left no widow or children at his death.

Quest. 6. What was the name of the father of Francisco Estrada?

Ans. His name was José Maria Estrada.

Quest. Was he the same person whose signature you have proved above?

Ans. He was.

Quest. Are you acquainted with a rancho called Pastoria de las Borregas? And if yea, state to whom it was granted and what you know in regard to its possession, occupation, and cultivation.

Ans. I am acquainted with the said rancho; it was granted to Francisco Estrada, and that he occupied it. In 1842, in pursuance of an order from the governor, I measured the land of which the said grantee was in possession, in doing which I acted in the capacity of sub-prefect. I made a written report of my proceedings in the matter of the measurement of the ranch and recorded them in my book of proceedings had by me as sub-prefect, and transmitted the report to the governor.

4 Quest. Where is the entry or record of this proceeding which you say you made?

Ans. I delivered the book containing them to the justice of the peace of the town of San José by the order of governor Micheltorena.

Quest. Were you or not ever present at any survey made of this land since your measurement as above stated of it, as a public officer? And if yea, what was your object of being at such survey, and what did you do on that occasion?

Ans. I did not ever see any actual survey of the land after my measurement of it as sub-prefect, but I accompanied a surveyor to the same land and pointed out to him the limits which I had first established.

Quest. Look at the map or sketch now shown to you, and to be attached hereto as Exhibit No. 3, and say whether or not it is a correct delineation of that measurement before made by you and of which you have spoken above, and state what lines and objects mentioned in the said map were noted and made by you in your measurement.

Ans. So far as I run the land the map or sketch now shown me, as above, it appears to be correct. I run the line from the point marked "X" on said map to the point marked "Z," leaving the house about fifty varas on the right of the line and between the line and the creek. I run the line in the way I did because of the meanders of the creek. I then went to the house and run a line from the said house of Robles to the laguna, marked on the map "A." Then I began a line at the point marked "H" on said map, where there is an arm of the estuary, those overgrown with rushes, (tulares,) and run it to the same point above mentioned, marked "A," at the laguna. Thence I run a line to point "B" on said map, at the edge of the chemisal or thickets. From said point "B" I run the line to the arroyo de San José de Caperterio, the point marked on the map "C." I did not proceed any further in my measurement.

Quest. Do you know whereabouts on the land the house of the Indian Ynigo was situated in the year 1844? And if yea, state if it is properly placed or located on the map exhibited above.

Ans. I believe it was put on the map where it was in 1844.

Quest. Do you or not know the distance and direction from that house of Ynigo to the spring called Las Anemas, and also how far the said spring is from the house of S. W. Whismar?

Ans. I do. The direction is northwest, and the distance about a half of a league, more or less; and the said spring is distant from Whismar about three or four hundred varas.

Quest. What improvements, if any, were on the land in 1842?

Ans. The grantee had at that time on the land a small house,
5 and he and his father-in-law cultivated some land upon it. The grantee, Francisco, had his cattle on the land.

Quest. Has or not the grantee and persons claiming under him had possession of this land ever since the grant?

Ans. The grantee and those claiming under him have been in possession ever since that time.

U. S. law agent present.

ANTONIO SUÑOL.

Sworn to and subscribed before me this 13th of Jan'y, 1853.
HARRY I. THORNTON, *Commissioner.*

Filed in office January 13th, 1853.
GEO. FISHER, *Secretary.*

(Here follows map, page 5.)

Deposition of Jose Fernandez.

SAN FRANCISCO, *Jan'y 15th*, 1853.

On this day, before Com'r Hiland Hall, came José Fernandez, a witness on behalf of the claimant, Mariano Castro, petition No. 257, and was duly sworn, his evidence being interpreted by the secretary. The U. S. associate law agent was present.

Questions by claimant:

Int. 1. What is your name, age, and place of residence? If you say that you reside in California, state how long you have resided here.

Ans. My name is José Fernandez; I am fifty-three years of age; I reside in the county of Santa Clara, California, and have lived in California thirty-five years.

Int. 2. Are you acquainted with the rancho called Pastoria de las Borregas? If yea, state where it is situated, and to whom it was granted.

Ans. I am acquainted with it; it is situated in the county of Santa Clara, about three or four miles northwest from the mission of Santa Clara; it was granted to Francisco Estrada.

Int. 3. Do you know anything of any measurement of this land? If yea, state what you know.

Ans. Yes; I know that a measurement was made of it; I think about the year 1842 or 1843, Don Antonio Suñol, who was at the time sub-prefect of San José, received an order from the governor to measure it; I was then secretary of the prefecture; I went upon the ground with Suñol, assisted in the measurement, and kept an account or memorandum of the lines; as secretary I drew up the paper myself, which contained a statement of the measurement, and made a copy of it, to be retained in the archives of the prefecture.

6 Int. 4. What became of this copy and the original?

Ans. The original was sent to the governor; the copy was deposited in the archives.

Int. 5. Do you know whether that copy is still in the archives?

Ans. I do not; I was alcalde in 1849, and it was then in the archives.

Int. 6. Was any one living on the land at the time it was measured? If yes, who?

Ans. Francisco Estrada had a house on the land, and was living there himself.

Int. 7. How long did he continue to live there?

Ans. Until his death, which occurred about the year 1845.

Int. 8. Did any one live there after his death? If yes, who?

Ans. Mariano Castro and his family occupied the land after the death of Estrada, and have lived upon it ever since.

Int. 9. Can you state what lines were run at the time of the measurement you have spoken of? If yea, state them.

Ans. We commenced on the north side of the estuary, and run a line in front of the house of Secunderio Robles to the edge of the chemisal, leaving the house less than twenty varas on the right hand; we then went nearly on this line to a point about five hundred varas from the said house towards the place began at; from that point we run a line towards Santa Clara, to a point called Lagunitas; this line passed about forty varas from the house of the Indian named Ynigo; after this we went to the estuary overgrown with rushes, and run a line from there to the Chemisal Grande, passing by the before-mentioned lagunitas; from thence we run the line to the Sanjors du Caperterio.

In answer to further questions by counsel for the claimant, the witness testified as follows:

When the land was surveyed in 1842 or 1843, the house of Ynigo was in a southerly direction from the spring of Las Animas, about two miles distant.

JOSE FERNANDEZ.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office January 15th, 1853.

GEO. FISHER, *Sec'y.*

Deposition of Antonio Ma. Pico.

SAN FRANCISCO, *January 17th*, 1853.

On this day, before Commissioner Hiland Hall, came Antonio Ma. Pico, a witness in behalf of the claimant, Mariano Castro, petition No. 257, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

7 Questions by claimant:

Int. 1. What is your name, age, and place of *reside?* If you state that you reside in California, for how long a time?

Ans. My name is Antonio Maria Pico; I am forty-four years of age, and reside in San José; I was born in California, and have lived in California all my life, and since 1832 in San José.

Int. 2. Have you or not ever held any public office in California? If yes, state what offices, and when.

Ans. From the year 1835 to 1849, I held some offices in the jurisdiction of San José—that of prefect, alcalde, or sindico, or justice of the peace.

Int. 3. Were any of the archives or records of the jurisdiction of San José ever in your charge?

Ans. Yes; whenever I held any of these offices the records and papers belonging to the office were in my charge.

Int. 4. Amongst the records in your charge, at any time did you ever see any record of the measurement of the rancho called Pastoria de las Borregas?

Ans. Yes; about the year 1844, when I was alcalde, I received the records of Don Antonio Suñol, sub-prefect, and amongst them was a book containing, among other things, the measurement of this rancho, made by Mr. Suñol.

Int. 5. Did you ever read this measurement? If yea, can you state what it was?

Ans. I saw and read the order of the governor to Mr. Suñol to make the measurement, and I read enough of the act to know that it was the measurement of the land. I cannot state what the measurements were; I only know that it was a measurement of the Pastoria de las Borregas.

Int. 6. How long was this book in your charge?

Ans. About two years.

Int. 7. What did you do with it?

Ans. I delivered it with the other records of the office to Dolores Pacheco, who succeeded me as alcalde.

Int. 8. Was this measurement contained in the book when you delivered it to Pacheco?

Ans. Yes.

Int. 9. Do you know where this book is, and whether it now contains this measurement?

Ans. The book, I suppose, is in the juzgado or amongst the records at San José: though I don't know. I have searched for this measurement; I have searched for other papers which ought to be there, and many of them are missing, and portions cut out of the books.

Int. 10. Are you acquainted with the signatures of Ynigo, Esquer, Nicanor del Castillo, and Antonio Mendez? If yes, look at the
8 paper now shown you, marked Exhibit No. 2, attached to the deposition of Antonio Suñol, on file in this case, and say whether or not the signatures of those persons are genuine.

Ans. I am acquainted with the signatures of the said several persons on said paper, and believe them to be genuine.

ANTONIO MA. PICO.

Sworn and subscribed before me.

HILAND HALL, *Commissioner.*

Filed in office January 17, 1853.

GEO. FISHER, *Secretary.*

Deposition of Antonio Suñol.

SAN FRANCISCO, *Jan'y 15th*, 1853.

On this day, before Commissioner Harry I. Thornton, came Antonio Suñol, a witness in behalf of the claimant, Mariano Castro, No. 257, and was duly sworn, his evidence being interpreted by the secretary.

Interrogatories of claimant:

Int. 1. What is your name, age, and place of residence?

Ans. My name is Antonio Suñol; I am fifty-five years of age; I reside in San José, California, where I have lived thirty-five years.

Int. 2. Did you ever search the old records of the jurisdiction of the rancho called Pastoria de las Borregas, made by you as sub-prefect? If yea, state when, and whether or not you found it.

Ans. About six months ago I searched the records referred to for this measurement; I found the book which formerly contained it, being the same book in which it was put by me when sub-prefect, and which was delivered by me to the alcalde, but this measurement was not in it; some twelve or fourteen of the leaves had been cut out, and amongst them the leaves which had contained this measurement.

Int. 3. Do you know by whom they had been cut out?

Ans. No.

Int. 4. What care has been taken of these records since 1844?

Ans. Until 1846 they were well taken care of; after that time they came into the hands of American alcaldes, and were kept carelessly. People were permitted to have access to them and to take them away; I have myself seen persons examining them and taking them away.

Int. 5. Do you know whether many of them are missing?

Ans. I think a great many are gone. I have on other occa-
9 sions searched for papers which had been there, without finding them.

U. S. law agent present.

ANTONIO SUÑOL.

Sworn to and subscribed before me this 15th of January, 1853.

HARRY I. THORNTON, *Com'r, &c.*

Filed in office January 15, 1853.

GEO. FISHER, *Secretary.*

Stipulation.

No. 257.—Mariano Castro, claimant of Pastoria de las Borregas.

It is stipulated that the espediente B, and the translation thereof, filed in case No. 90, in which Martin Murphy claims part of the same tract of land, may be considered as filed in this case, and read in evidence on the hearing, and that a copy of these papers, certified by the secretary of the board, may be hereafter filed in this case and considered as having been filed before the hearing.

V. E. HOWARD,
A. P. CRITTENDEN,
Att'ys for Claimant.

Filed in office Sept. 21st, 1853.

GEO. FISHER, *Secretary.*

(For map see original, page 25.)

Doc. H. I. T. No. 1, *to depo. of Anto. Suñol.*

Sello 1o.—Seis pesos.

Habilitado provisionalmente por la aduana maritima de Monterey para los anos de 1839 y 1840.

ALVARADO.
ANTONIO MARIA OSIO.

Valga para el ano de 1842.
[Sello.]

J. ALVARADO.
ANTONIO MARIA OSIO.

Juan Alvarado, gobernador constitucional del departamento de las Californias.

Por cuanto Don Francisco Estrada ha pretendido para su beneficio personal, y el de su familia, el terreno conocido con el nomber de Pastoria de las Borregas, colindante con el terreno de Don Jose Peña por la parte del Sausal de las Borregas, con el rancho de Don Prado Mesa y la punta del Roblar practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas a nombre de la nacion Mejicana he venido en concederle el terreno mencionado declarandole de la propiedad de el por las presentes letras, sujetandose a la aprobacion de la Excma. Junta Departamental y bajo las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las travesias, caminos y ser vidumbres; lo disfrutara libre y esclusivamente destinandolo al uso o cultivo que mas le acomode, pero dentro de un ano fabricara casa y estara habitada.

2a. Lo cutara del juez respective que le de posesion juridica en virtud de este despacho por el cual se demarcaron los terminos en cuyos limites pondra a mas de sus mojoneras, algunos arboles frutales o silvestres de alguna utilidad.

3a. El terreno de que se hace mencion es de dos sitios de ganado mayor, poco mas o menos segun esplica el diseno. El juez que diere la posesion lo hara medir conforme a ordenanza quedando el sobrante que resulte a la nacion para los usos convenientes.

4a. Si contraviniere a estas condiciones, perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que teniendose por firme y valedero el presente titulo, so tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterey a quince de Enero de mil ochocientos cuarenta y dos.

JUAN B. ALVARADO.

MANUEL JIMENO, *Secretario.*

Queda tomada razon de este titulo en el libro de asentas sobre adjudicacion de terrenos baldios a fos. 9.—JIMENO.

El Excmo. Sr. Gobernador ha dispuesto se tome razon de esta concesion en la prefectura del primer distrito.—JIMENO.

Monterey, Enero 16 de 1845, tomese razon.—ESTRADA.

Se tome razon de este superior titulo a fa. 4a. del cuaderno respectivo. Prefectura del primer distrito, Monterey, Enero 16 de 1842.

Se da por acordado del gobierno departamental de California se declare el dia de hoy que el indigeno de Santa Clara nombrada Ignacio, se le estendiese la concesion del terreno que ocupa, siendo los linderos desde la casa hasta el primer ojo de agua incluso el llamado las animas y desde el Sausal hasta los Esteros y para la debida constancia se anota en este titulo.

Monterey, 14 de Febrero de 1844.

MANUEL MICHELTORENA.

Como heredero del finado Francisco Estrada, digo que cedo voluntariamente a favor del ciudadano Mariano Castro, los dos sitios que se espresaron en este titulo. Buenavista, 17 de Marzo de 1845.

JOSE MARIA ESTRADA.

Filed 10 o'clock a. m., 2d June, A. D. 1851.

J. B. RICHARDSON, *Recorder*,
F. FLOURNOY, *Dep'y Recorder.*

Recorded in Book of Deeds, page 416, in the recorder's office, San Jose, at 10 o'clock a. m., 2d June, 1851.

J. B. RICHARDSON,
F. FLOURNOY, *Dep'y Recorder.*

Filed in the office Jan'y 13th, 1853.

GEO. FISHER, *Sec'y.*

11 *Doc. No.* 2, *H. J. T., to Depo. of Antonio Sunol.*

En veintisiete de Enero de mil ochocientos cuarenta y seis comparecieron ante mi los testigos de asistencia con quienes actue por falta de escribano publico, los Senores Don Jose Mariano Estrada y Don Mariano Castro, y dijo el primero que devolviese el segundo el derecho que tiene en el terreno conocido a su hijo Don Francisco Estrada y difunto el titulo que antecede se haga se le entregue juridicamente dicha cesion, como yo Ignacio Ergues, regidor decreto y encargado del segundo juzgado lo verifico, vienen proviniendo mi autoridad judicial para vue se tenga por firme valedera la referida cesion to firmaron conmigo y los de asistencia.

ANTO. MILANOR DEL CASTILLO.
JOSE MARIANO ESTRADA, *J'gt Esquar.*

Asa: ANTONIO MEWLEZ.

I, the undersigned, do hereby certify that an exact copy of the foregoing title and accompanying document is recorded in the government archives, in the secretary of state's office.

Monterey, 17th October, 1849.

W. E. HARTWELL, *Gov't Translator.*

Filed for record at 10 o'clock a. m., 2d June, A. D. 1851.

————, *Recorder*,
J. FLOURNOY, *Deputy Recorder.*

Recorded in Book of Deeds, pages 417 and 418, at 10 o'clock a. m., 2d June, 1851. Recorder's office, Santa Clara county.

J. T. RICHARDSON, *Recorder's Dep.*

Filed in office January 13th, 1853.

GEORGE FISHER, *Secretary.*

Translation of Doc. No. 2, H. I. T., to Depo. of Anto. Suñol.

On the 27th day of January, 1846, the Messrs. Don Mariano Estrada and Don Mariano Castro came before me and the assisting witnesses, with whom I act for the want of a notary public, and the first declared, that having relinquished unto the second his right to the tract of land granted to his son, Don Francisco Estrada, now deceased, by the foregoing title, he asked that the said cession should be judicially authenticated to him, which I, Ygnacio Esquer, regidor decano, charged with the second juzgado, hereby authenticate, interposing my judicial authority. In order to give the said cession force and validity, they signed it with me and the assisting witnesses.

(Signed) YGNACIO ESQUER.
(Signed) JOSE MAR'NO ESTRADA.

Assisting witnesses:
(Signed) NICANOR DEL CASTILLO.
(Signed) ANTONIO MENDEZ.

12 A true and correct translation. Witness my hand this 13th day of January, 1853, and filed same date.

GEO. FISHER, *Secretary.*

Certificate.

MAYOR'S OFFICE. CITY OF SAN JOSE,
State of California, County of Santa Clara.

I certify that the archives of the pueblo de San José are at this time in my possession, and that I have made search in said archives for the measurement of the rancho called "Pastoria de las Borregas." The book of the prefecture of said pueblo for 1841 and 1842 I have also examined, and can find nowhere anything relating to said rancho.

Witness my hand and the seal of said city this 28th day of January, A. D. 1853.

THO. WHITE, [L. S.]
Mayor of San Jose.

Filed in office September 1, 1853.

GEO. FISHER, *Secretary.*

B.—*Translation of the grant, Doc. H. I. T. No.* 1, *to Depo. of Anto. Suñol.*

1st seal.—Six dollars.

Provisionally qualified by the maritime custom-house of Monterey for the years of 1839 and 1840.

ALVARADO.
ANTONIO MA. OSIO.

To be valid for the year 1842.

ALVARADO.
ANTONIO MA. OSIO.

Juan B. Alvarado, constitutional governor of the department of Californias.

Whereas Dn. Francisco Estrada has sought to obtain for his personal benefit and that of his family the tract of land known by the name of Pastoria de las Borregas, bounded by the tract of Dn. José Peña on the side of Sansal de las Borregas, by the rancho of Dn. Prado Mesa, and by the laguna, situated at the Punta del Roblar—having been previously performed the inquiries and investigations relating thereto, according to the provisions of the laws and regulations—using the powers which are conferred on me, in the name of the Mexican nation, I have conceded to him the said tract of land, declaring to him the ownership thereof by these present letters, subject to the approbation of the most excellent department council, and under the following conditions:

1st. He may enclose it without injuring the crossings, roads, and thoroughfares; enjoy it freely and exclusively, applying it to the use or cultivation that may suit him best; but within one year he shall build a house, and it shall be inhabited.

13 2d. He shall solicit the proper judge to give him juridical possession, by virtue of this dispatch, whereby the boundaries shall be demarked, in the limits of which he shall put, besides the landmarks, some fruit or useful wild trees.

3d. The land of which donation is made of two sitios de ganado mayor, a little more or less, as shown by the plat which goes annexed to the espediente. The judge giving the possession shall cause it to measured according to ordinance, the surplus to remain for the proper use of the nation.

4th. If he contravene these conditions, he will lose his claim to the land, and it shall be denounceable by another.

Wherefore I order that this title being held as firm and valid, an entry be made of it in the proper book, and it be delivered to the party intested, for his safety and other purposes.

Given at Monterey, the fifteenth of January, 1842.

JUAN B. ALVARADO.

MANUAL JIMENO, *Secretary.*

Account is taken of this title in the book of registry on adjudications of the vacant lands, at page 9.

JIMENO.

His ex'y senor governor has directed an account to be taken of this concession in the office of the prefect of the 1st district.

JIMENO.

MONTEREY, 16*th January*, 1842.

Let an account be taken.

ESTRADA.

Account is taken of this sup'r title at page 4 of the proper book. Office of the prefect of the 1st district, Monterey, 16th January, 1842. MAN'L CASTANARES, *Secretary.*

By the departmental government of California it was this day resolved that the concession of the land which the Indian of Sta. Clara, called Ynigo, occupies, should be issued to him, being the boundaries from his house to the first spring of water, inclusive, called Las Animas, and from the Sansal to Las Esteros; and in proof thereof it is noted in this title.

Monterey, February 14th, 1844.

MAN'L MICHELT'A.

As the heir of the late Francisco Estrada, I say that I voluntarily cede to the citizen Mariano Castro the two sitios which are mentioned in this title.

Buenvista, 17 March, 1845.

JOSE MA. ESTRADA.

Filed in office May 31st, 1852.

GEO. FISHER, *Secretary.*

14 [1 S. D. K.]

Espediente.

Promovido por los Senores Don Mariano y Don Francisco Estrada en solicitud del parge conocido con el nombre de la Pastoria.

1841.—265.

Senor prefecto del 1er distrito:

El C. Jose Mariana Estrada, ante V. S. como haya lugar en derecho, digo: que a consecuencio de tener aquerenciado en el parage de Santa Clara, titulado la Pastoria, mas de mil cabezas de ganado mayor, que conduge a este sitio por tenerlo a mi inmediato cuidado, cuando me encargue en administracion de dicho establecimiento, he de merecer de V. S. tenga a bien elevar la presente solicitud al gobierno departamental, a fin de que se me conceda en plena libertad, para establecer un rancho en compania de mi hijo Francisco, que se encuentra sin propiedad con que subsistir, on el concepto de que el mencionado terreno constara de dos sitios de ganado mayor, poco mas o menos: por tanto

A V. S. sublico se sirva proveer como llevo pedido de lo que recibire gracia: juro lo necesario, etc.

JOSE ESTRADA.

SAN JUAN DE CASTRO, *Enero* 16, 1840.

Informe del administrador de Santa Clara, sobre lo que respecta al establecimiento de su cargo. Evacuado este informe pase al juez de de San Jose de Alvarado para que exponga lo que estime por justo.

CASTRO.

[3 S. D. K.]

Senor prefecto del 1er distrito:

El administrador de este establecimiento, que suscribe, se cree exonerado de dar el informe que se pide en el anterior decreto, respecto a que el pretendiente es su padre legitimo: V. S. en su vista, se servira determinar lo mas justo.

Santa Clara, 5 de Febrero de 1840.

JOSE R. ESTRADA.

Senor prefecto del 1er distrito:

En cumplimiento del superior decreto de V. S. que antecede digo: que los interesados obtienen los requisitos legales para ser atendidos, que el terreno que pretenden es conocido por de la exmision de Santa Clara y se halla ocupada con bienes: es cuanto puedo informar con lo que creo dar el lleno debido.

San Jose de Marrado, Febrero 13 de 1840.

DOLORES PACHECO.

Excmo. Senor:

En la presente instancia, solicita Don Jose Mariano Estrada, se le confiera en propiedad el terreno de Santa Clara, titulado la Pastoria, para establecer en el a su hijo Francisco Estrada.

Esta prefectura no encuentra inconveniente alguno en que se conceda al interesado la gracia que solicita siempre que sea de la aprobacion de V. E.

San Juan de Castro, Febrero 19 de 1841.

JOSE J. CASTRO.

MONTEREY, *Febrero* 23 *de* 1841.

Pase este espediente al actual encargado del establecimiento de Santa Clara, debiendo el interesado agregar el diseno del terreno que pide.

ALVARADO.

Excmo. Senor:

En cumplimiento al superior decreto que antecede digo: hallarme en el mismo lugar que mi antecesor dice en su informe, por ser el solicitante allegado mio: solo si espresare que en el tiempo que mi dicho antecesor estuvo en este establecimiento se hallaba el terreno que en el ecsisten a la fecha son muy pocos, pues no habiendo mas de 490 borregas, incluso 100 que dejo Don Jose Estrada a favor de Dona Soledad Ortega. Con respecto al ganado mayor que en dicho terreno ecsiste, tengo detallado concluir con el en matanzas semanarias para la jente, tan luego como llegue el buen tiempo, por estar dich ganado alzado en los suazales y no querer reconocer al rodeo, por lo cual puede concederseles a los pretendientes, siempre que asi se crea justo.

Santa Clara, Febrero 27 de 1841.

IGNACIO ALVISO.

MONTEREY, *Enero* 15 *de* 1842.

Vista la peticion con que da principio este espediente, el informe del senor prefecto del 1er distrito, y el del administrador del establecimiento de Santa Clara, y todo lo demas que se tuvo presente y ver convino de conformidad con las leyes y reglamentos de la materia, declaro a Don Francisco Estrada dueno en propiedad del terreno nombrado la Pastoria de las Borregas, colindante con el terreno de Don Jose Meso y la Punta del Roblar en estension de dos sitios de
16 ganado mayor segun demuestra el adjunto deceno. Estiendase el despacho correspondiente, tomese razon en el libro respectivo y dirijase este espediente a la excma. junta departamental, para su aprobacion.

El Senor Don Juan B. Alvarado, gobernador constitucional del departamento de las Californias asi lo mando, decreto y firmo de que doy fə.

Juan B. Alvarado, gobernador constitucional del departamento las Californias.

Por cuanto Don Francisco Estrada ha pretendido para su beneficio personal y el de su familia, el paraje conocido con el nombre de Pastoria, colindante con el terreno de Don Jose Pena, con el de Don Prado Mesa y la punta del Roblar practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos dela materia, declara al referido Don Francisco Estrada dueno del terreno mencionado, declarandole la propriedad de el por las presentes letras sujetandoso a la aprobacion de la excma. junta departamental y a las condiciones siguientes:

1 Podra sercarlo sin perjudicar las travesias, caminos y servidumbres, lo disfrutara libre y exclusivamente destinandolo al uso o cultivo que mas le acomode, pero dentro de un ano fabricara casa y estara habitada.

2. El terreno de que se hace mencion, es de dos sitios de ganado mayor, poco mas o menos, segun esplica el diseno respectivo. El juez que diere la posesion, lo hara medir conforme a ordenanza, quedando el sobrante que resulte a la nacion, para los usos convenientos.

3. Cuando se le conforme la propiedad de el, solicitrra del juez respectivo que le de posesion judicial, en virtud de este despacho, por el cual se demarcaran los linderos en cuyos limites pondra a mas de las mojeneras algunos arboles frutales o silvestres de alguna utilidad

4. Si contraviniere a estas condiciones perdera su derecho al ter. reno y sera denunciable por otro.

En consecuencia mando que teniendose por firme y valedero el presente titulo, se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y fines. Dando en Monterey a quince de Enero do mil ochocientos cuarenta y dos.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such, now having in my office and under my charge and custody a portion of the archives of the former Span-

ish and Mexican Territory or department of Upper California,
17 do hereby certify that the nine preceding and hereunto annexed pages of tracing paper, numbered from one to nine, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto subscribed my name officially, and affixed my private seal, not having a seal of office, at the city of San Francisco, Cal., this 25th day of February, 1852.

SAMUEL D. KING, *Surveyor General, Cal.*

Filed in office March 3d, 1852.

GEO. FISHER, *Secretary.*

Translation of espediente "B," from No. 90.

Espediente.

Carried on by Messrs. Mariano and Francisco Estrado, on application for the place known by the name of "La Pastoria."

1841.—265.

Mr. Prefect of the 1st district:

Citizen Jose Mariano Estrada, before your worship in form of law, says that in consequence of more than a thousand head of black cattle having been fond of the place of Santa Clara, called "La Pastoria," which I conveyed to this place for having them under my close care, when I took charge of the administration of establishment, I should desire that your worship be pleased to elevate the present application to the departmental government, in order that it may be granted to me in ample liberty to settle a rancho in company with my son Francisco, who is without property to subsist on, under the understanding that the said tract should consist of two leagues, more or less.

Therefore I pray your worship be pleased to order as prayed, whereby I shall receive favors.

I swear as usually, &c.

JOSE ESTRADA.

Mr. Prefect of the 1st district:

If the subscriber, administrator of this establishment, be exonerated from giving a report, asked in the foregoing order, in consideration of the solicitant being his father; in view thereof, your worship will be pleased to determine what is just.

Santa Clara, February 5th, 1840.

JOSE R. ESTRADA.

Mr. Perfect of the 1st district:

In compliance with the preceding superior order of your
18 worship, I say that the parties interested have the requisites of law to be attended to, that the tract of land they seek to

obtain is known as that of the ex-mission of Santa Clara, and is occupied with cattle stock. This is all I can inform.

S. Jose de Alvarado, February 13th, 1840.

DOLORES PACHECO.

M'T EXCELLENT SIR: In the present petition Don Jose Mariano Estrada solicits that the tract of land of Santa Clara, named "La Pastoria," may be confirmed to him in ownership to settle therein his son, Francisco Estrada.

This prefectship does not find any inconvenience in the favor he solicits being granted to the party interested, provided it be of your worship's approval.

San Juan de Castro, February 9, 1841.

MONTEREY, *February* 23*d*, 1841.

Let this expediente be passed to the actual trustee of the establishment of Santa Clara, the party interested, to annex thereto a design of the tract asked for.

ALVARADO.

M'T EXCELL'T SIR: In compliance with the foregoing superior order, I say I am in the same position as my predecessor mentions in his report, for the solicitant being my ally, I shall but express that at the time my said predecessor was in this establishment, the tract asked for was occupied with more then 3,000 lambs, but the stock existing therein at present is very short, for it does not reach more than 490 lambs, inclusive 100 which Don Jose Estrada left for Dona Soledad Ortega. With regard to the black cattle existing in said tract, I have enumerated to have done with them by slaughtering weekly for the folks so soon that good weather comes on, for said cattle being hiding in the willow thickets, will not come out when they are run after; wherefore it can be granted to the solicitants, provided you deem it just.

Santa Clara, February 27th, 1841.

YGN'O ALVIRES.

MONTEREY, *January* 15*th*, 1842.

In view of the petition wherewith this espediente begins of the report of Mr. Prefect of the 1st district, and that of the administrator of the establishment of Santa Clara, and all other that was represented and ought to be viewed in conformity with the laws and regulations on the matter, I declare Don Francisco Estrada owner in property of the land called "Pastoria de las Borregas," bounded by the land of D'n Jose Peña, by that of Don Prudo Mesa, and "La Punta del Roblar," to the extent of two leagues, (sitios de ganado mayor,) as shown by the annexed design. Let a proper de-
19 spatch be issued, a registry made in the respective book, and this espediente be directed to the m't excellent departmental board for its approval.

S'or Don Juan B. Alvarado, constitutional governor of the department of the Californias, thus commanded, decreed, and signed, which I testify.

Juan B. Alvarado, constitutional governor of the department of the Californias.

Whereas Don Francisco Estrada has sought to obtain for his personal benefit, and that of his family, the place known by the name of "La Pastoria," bounded by the land of Don Jose Peña, by that of Don Prado Mesa, and La Punta de Roblar, all the steps and investigations thereto having been previously made and taken according to the dispositions of the laws and regulations on the matter, I declare the said Don Francisco Estrada owner of the tract of land above mentioned, declaring to him the ownership thereof by the present letters, subject to the approval of the m't excell't departmental board, and to the following conditions:

1st. He may enclose without injuring the passages, roads, and servitudes; he may enjoy it freely and exclusively, applying it to such use as may suit him best, but within one year he shall build a house, and it shall be inhabited.

2d. The tract of which mention is made is of two leagues, (sitios de ganado mayor,) a little more or less, as shown by the respective design.

The judge giving the possession shall cause it to be measured according to ordinance, the surplus thereof to be left to the nation for other convenient purposes.

3d. When the ownership thereof is confirmed, he shall apply to the proper judge to give him juridical possession, by virtue of this despatch, whereby the boundaries shall be marked out, in the limits of which he shall put, besides the landmarks, some fruit or useful wild trees.

4th. If he shall contravene these conditions, he shall forfeit his right to the tract, and shall be denounceable by others.

Wherefore I command that the present title being held as firm and valid, a registry thereof be made in the proper book, and it be delivered to the party interested for his safety and other purposes.

Given in Monterey on the 15th of January, 1842.

Filed in office March 19, 1853.

GEO. FISHER, *Secretary.*

Recorded in Ev. B., vol. 10, p. 340.

GEO. FISHER, *Secretary.*

20 *Opinion of the board by Commissioner Thompson Campbell.*

MARIANO CASTRO *vs.* THE UNITED STATES. } Rancho del Refugio or Pastoria del Borregas.

The papers filed in this case show that on the 2d day of January, A. D. 1842, one Don Francisco Estrada obtained from Governor Alvarado a grant for the place called Pastoria de las Borregas; that some time in the year 1845 the said grantee died without wife or children, but leaving a father, mother, and several brothers and sisters; that the father of said grantee, as heir of his son Francisco, on the 17th day of March, A. D. 1849, conveyed all his interest in and

to said tract of land to the petitioner in this case. The grant is satisfactorily proved to be genuine, and the conveyance from Jose M. Estrada is executed in conformity with the laws then in force. By a stipulation on file, made between the law agent and the counsel for the claimant, the espediente marked "B," and the transcript filed in case No. 90, being the claim of Martin Murphy, are considered as filed in the case. It is in proof that juridical measurement was made of said place in the year 1842, the record of which is shown to be lost. For the purpose of establishing the boundaries of said tract of land, it is proved by the deposition of Antonio Suñol that a sketch, marked Exhibit No. 3, and annexed to his deposition, contains, as far as he saw the land, a correct delineation of the judicial measurement made by him in the year 1842. He traces the boundaries laid down on said sketch, and identifies them as being a correct delineation of the judicial measurement above referred to. The question now presented is, whether the party has laid a sufficient foundation for the introduction of secondary proof; and if so, whether the proof given can be received as a substitute for the lost record of the judicial measurement of the premises in question.

The evidence shows that judicial measurement was duly made by an officer authorized to perform such acts; that it was recorded in the proper book; that an examination has been made; and that the leaves that were supposed to contain said record had been cut from said book. This, I think, establishes a legal foundation for the admission of evidence showing the contents of the lost record. The mode by which the party has supplied the primary proof of the boundaries of the tract of land, is, perhaps, the best that could have been adopted. It appears that the witness, who is the same person that made the judicial measurement, accompanied the surveyor who made the sketch referred to, and pointed out to him the limits which he had first established, and after the survey is completed and the boundaries delineated on a map, he identifies them as being the same which had been previously established by him. Taking the description as given
21 in the grant, in connection with all the other evidence in the cause, I am of opinion that there will be but little difficulty in ascertaining the precise land granted; a substantial compliance with the conditions of the grant by the original grantee, within the time prescribed, has been satisfactorily shown by the depositions of witnesses on file in the case. In entering a decree of confirmation in this case, two tracts of land embraced within the original boundaries will be excepted: first, the tract of land belonging to the Indian Ynigo, which was reserved to him by the departmental assembly, as appears from the following note made by Governor Micheltorena on the back of the original grant, to wit: By the departmental government of California it was this day resolved that the concession of the land which the Indian of S'ta Clara, called Ynigo, occupies, should be issued to him, being the boundaries from his house to the first spring of water inclusive, called Las Animas, and from the Sansal to Los Esteros, and in proof thereof it is noted in this title.

Monterey, February 14th, 1844.

(Signed) MANUEL MICHELTORENA.

It is clear from this note that the place called Las Animas, belonging to said Indian, was excepted from the grant made to Estrada, and constituted no part of the land embraced in that instrument; second, the tract or parcel of land, described in two several deeds, executed by the said petitioner to one Martin Murphy, reference being had to case No. 90, in which copies of said deeds are filed, said lands as therein described are excepted from confirmation in this case. With the above exceptions, the claim in this case is hereby confirmed.

Filed in office Jan'y 24th, 1854.

GEO. FISHER, *Secretary.*

Decree of confirmation.

MARIANO CASTRO
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed. The lands of which confirmations are hereby made are a part of the place known by the name of Pastoria de las Borregas, which place is bounded and described as follows, to wit: bounded by the tract of Don José Peña on the side of Sansal de las Borregas, by the rancho of Don Prado Mesa, and by the laguna situated at the "Punta del Roblar," containing in all two square leagues, a little more or less, excepting from the confirmation two tracts of land embraced and within the foregoing boundaries. For a particular description of the tract thus excepted reference is made to the opinion of the confirmation filed in this case, and also to a note made by Governor Micheltorena in the back of the original grant, and to two deeds executed by said petitioner to one Martin Murphy, and filed in No. 90; reference for further description of the place called Pastoria de las Borregas, to a map which forms a part of the traced copy of the espediente filed in case No. 90, in which case Martin Murphy is claimant; and reference is also made to the deposition of Antonio Suñol, filed in this case, and to the sketch or map annexed to said deposition, and marked Doc. No. 3, and filed in the cause.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office January 24, 1854.

GEO. FISHER, *Secretary.*

Secretary's certificate.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary of the board of commissioners to ascertain and settle private land claims in the State of California, do

hereby certify the foregoing thirty-eight pages, numbered from 1 to 38, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, *is* case No. 257 on the docket of the said board, wherein Mariano Castro is the claimant, against the United States, for the place known by name of "Refugio."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, California, this thirteenth day of September, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

[SEAL.] GEO. FISHER, *Secretary.*

Indorsed: Filed Sept. 13th, 1854.

J. A. MONROE, *Clerk.*

23 *Appeal notice.*

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 30th November, 1854.

MARIANO CASTRO
vs.
THE UNITED STATES. } 257.

You will please take notice that in the above case decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 30th day of August, 1854, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Indorsed: Filed January 8th, 1855.

JOHN A. MONROE, *Clerk.*

Petition.

To the honorable district court of the United States in and for the northern district of California:

THE UNITED STATES, appellant,
vs.
MARIANO CASTRO. } No. 97.

The petition of the United States, by their attorney, represents that this cause is an application for a review of the decision of the board of commissioners, whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court on the 1st day of May, 1854, and that a notice of appeal was filed on the 1st day of May, 1854, and that the land claimed lies in the said district; that the said claim is invalid. Wherefore appellants pray that the said decision of the

board be reversed, and that the court decree the said title to be invalid.

Respectfully, &c.,

S. W. INGE, *U. S. District Att'y.*

Indorsed: Filed Oct. 15th, 1855.

JOHN A. MONROE, *Clerk,*
By W. H. CHEEVERS, *Deputy.*

24 *Stipulation and order.*

District court of the United States for the northern district of Calif'a.

THE UNITED STATES
vs.
MARIANO CASTRO. } No. 97.

It is stipulated in this case an order may be entered, that the transcript be returned to the secretary of the land commission for the purpose of being corrected, and for that purpose may be taken out of the clerk's office by the claimant's attorney.

Oct. 18, 1855. A. P. CRITTENDEN, *Att'y for Claimant.*
A. GLASSELL, *Ass't U. S. Att'y.*

Let the order be entered in accordance with the above stipulation.

Oct. 18, 1855. M. HALL McALLISTER, *Judge, &c.*

Indorsed: Filed Oct. 29th, 1855.

JOHN A. MONROE, *Clerk.*
By W. H. CHEEVERS, *Deputy.*

Answer.

District court of the United States for the northern district of Calif'a.

THE UNITED STATES, appellants,
vs.
MARIANO CASTRO, appellee. } No. 97.

For answer to the petition of the appellants, the appellee admits that the land claimed by him lies in said northern district. He denies that his said claim is invalid, as alleged, but insists that the same is good and valid, and prays that the decision of the board of commissioners confirming it to be affirmed by this court.

A. P. CRITTENDEN, *Att'y for Appellee.*

Indorsed: Filed March 21, 1866.

JOHN A. MONROE, *Clerk,*
By W. H. CHEEVERS, *Deputy.*

Stipulation and certified copy of deposition of Anto. Suñol.

United States district court for the northern district of California.

THE UNITED STATES, appellants,
vs.
MARIANO CASTRO, appellee. } No. 97.

It is stipulated that the within correct copy of a deposition
25 of Antonio Suñol, and of the map thereto attached, shall be considered as substituted in the transcript on file in this court in the above-named case, in place of the incorrect copy of the same, which appears in said transcript.

San Francisco, April 26, 1856.

A. P. CRITTENDEN, *Att'y for Appellee.*
A. GLASSELL, *Ass't U. S. Dist. Att'y.*

SAN FRANCISCO, *January* 13*th*, 1853.

On this day, before Com'r Harry I. Thornton, came Antonio Suñol, a witness in behalf of the claimant, Mariano Castro, petition No. 257, and was duly sworn, his evidence being interpreted by the secretary. The U. S. associate law agent was present.

Questions by claimant:

Question 1st. What is your name, age, and place of residence? and how long have you resided there?

Ans. My name is Antonio Suñol; my age is fifty-five years, and I reside in the town of San José, where I have lived thirty-three years.

Question 2. Are you acquainted with the handwriting of Juan B. Alvarado, Manuel Jimeno, José Mariano Estrada, Manuel Micheltorena? If yea examine the document now here filed as Exhibit No. 1 to this deposition, and say whether the signatures of the above-named persons, wherever they occur in and upon said document, are their genuine signatures.

Answer. I am acquainted with the handwriting of all the persons named in the above interrogatory, having seen them write. I have examined the documents described, and say that their signatures, wherever they occur in and upon said document, are their genuine signatures.

Question 3. Examine the document now here shown to you, and filed herewith, marked Exhibit No. 2, and say if the signature of José Mariano Estrada, where it appears on the said document, is his genuine signature.

Answer. It is the genuine signature of said Estrada, where it is written on the said document so shown to me and marked as above mentioned.

Question 4. Were you acquainted with Francisco Estrada and his family? and if so, state when he died, and who were his relatives.

Answer. I was acquainted with Francisco Estrada and his
26 family; I do not know when he died. I knew his father and mother and brothers and sisters, all of whom survived the said Francisco Estrada.

Question 5. Did Francisco Estrada leave any wife or children?

Answer. He left no widow or children at his death.

Question 6. What was the name of the father of Francisco Estrada?

Answer. His name was Jose Mariano Estrada.

Question. Was he the same person whose signature you have proved above?

Answer. He was.

Question. Are you acquainted with rancho called Pastoria de las Borregas? and if yea, state to whom it was granted and what you know in regard to its possession, occupation, and cultivation.

Ans. I am acquainted with the said rancho; it was granted to Francisco Estrada, and that he occupied it. In 1842, in pursuance of an order from the governor, I measured the land of which the said grantee was in possession; in doing which I acted in the capacity of sub-prefect. I made a written report of my proceedings in the matter of the measurement of this ranch, and recorded them in my book of proceedings had by me as sub-prefect, and transmitted this report to the governor.

Question. Where is the entry or record of this proceeding which you say you made?

Ans. I delivered the book containing them to the justice of the peace of the town of San Jose by the order of Governor Micheltorena.

Question. Were you or not ever present at any survey made of this land since your measurement as above stated of it as a public officer? and if yea, what was your object in being at such survey, and what did you do on that occasion?

Answer. I did not ever see any actual survey of the land after my measurement of it as sub-prefect, but I accompanied a surveyor to the same land, and pointed out to him the limits which I had first established.

Question. Look at the map or sketch now shown to you, and to be attached as Exhibit No. 3, and say whether or not it is a correct delineation of that measurement before made by you, and of which you have spoken above, and state what lines and objects mentioned in the said map were noted and made by you in your measurement.

Answer. So far as I saw the land, the map or sketch now shown me as above, it appears to be correct; I ran the line from the point marked X on said map to the point marked Y, leaving the house about fifty varas on the right of the line, and between the line and the creek. I ran the line in the way I did because of the meanders of the creek. I then went to the house, and ran a line from the said
27 house of Robles to the laguna marked on the map, point A; then I began a line at the point marked H on said map, where there is an arm of the estuary there overgrown with rushes, (tulares,) and run it to the same point above mentioned, marked A, at the laguna; thence I ran a line to point B on said map, at the edge of the chemisal or thicket from said point B; I ran the line to the Arroyo de San Jose de Capalino to the point marked on the map C. I did not proceed any further in my measurement.

Question. Do you know whereabouts on the land the house of the Indian Ynigo was situated in the year 1844? and if yea, state if it is properly placed or located on the map exhibited above.

Answer. I believe it is put on this map where it was in 1844.

Question. Do you or not know the distance and direction from that house of Ynigo to the spring called Las Animas, and also how far the said spring is from the house of J. W. Whisman?

Answer. I do; the direction is northwest, and the distance about half of a league, more or less, and the said spring is distant from Whisman's about three or four hundred varas.

Quest. What improvements, if any, were on the land in 1842?

Ans. The grantee had at that time on the land a small house, and he and his father-in-law cultivated some land upon it. The grantee, Francisco, had his cattle on the land.

Quest. Have or not the grantee and persons claiming under him had possession of this land ever since the grant?

Ans. The grantee and those claiming under him have been in possession ever since that time.

ANTONIO SUÑOL.

U. S. law agent present.

Sworn to and subscribed before me this 13th of January, 1853.

HARRY I. THORNTON, *Commissioner.*

Indorsed: No. 257. Mariano Castro. Rancho del Refugio. Pastoria de las Borregas. Deposition of Antonio Suñol, taken before Com'r Harry I. Thornton. Filed in office January 13th, 1853. Geo. Fisher, secretary. Recorded in Ev. B., vol. 2, p. 435. Ex. F. G. Geo. Fisher, secretary.

[Here follows map, page 27.]

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my charge and custody the records of the late board of U. S. commissioners to ascertain and settle private land claims in California, do hereby certify that the preceding and hereunto annexed pages, numbered from 1 to 6, 28 inclusive, exhibit true copies of the following described documents, to wit: pages numbered from 1 to 5 exhibit a true copy of the deposition of Antonio Suñol, taken before Commissioner H. I. Thornton, in behalf of claimant, Mariano Castro, in petition No. 257; page 6 exhibits a true copy of a map marked Exhibit No. 3 to the above-described deposition of Antonio Suñol.

Given under my hand and official seal, at the city of San Francisco, this 25th day of April, A. D. 1856.

[SEAL.]

JOHN C. HAYS,
U. S. Surveyor General, Cal.

Indorsed: Filed April 28th, 1856.

JOHN A. MONROE, *Clerk,*
By W. H. CHEEVERS, *Deputy.*

Copy of deposition of Wm. J. Lewis, and stipulation to admit same.

SAN FRANCISCO, *March 3d,* 1853.

On this day, before Commissioner Harry I. Thornton, came W. J. Lewis, a witness in behalf of the claimant, Martin Murphy, petition No. 90, and was duly sworn, his evidence being given in English.

Questions by claimant:

Question 1. What is your name, age, and place of residence, and business or pursuit?

Answer. William J. Lewis is my name; my age is about forty-one years, and my residence is San Jose; and my business is that of civil engineer, and I am at present surveyor of the county of Santa Clara.

Question 2. Are you acquainted with the Rancho del Refugio? and, if so, state what you know about it and its occupation.

Ans. I am acquainted with this rancho, and the map which is now shown to me, being the same which is attached as document No. 3 to the deposition of Antonio Sunol, taken in case No. 257, is a correct copy on a reduced scale of a plat made under my direction of the said rancho, the survey having been made by me according to the boundaries pointed out to me by Mr. Sunol, the witness above mentioned. I know that it is occupied by Mariano Castro, Martin Murphy, and others.

Quest. What do you know, if anything, of the position of this rancho which is occupied by Martin Murphy?

Ans. I made two surveys of parts of this rancho for said Murphy; the first I made on the 28th and 29th of October, 1850, at the request of Castro, the grantee, and the said Murphy; I also made a second survey at the request of the same parties of another portion of the said rancho on the 7th, 8th, and 9th of April, 1851. The land of which I made those surveys all lies within the bounds of the rancho of Castro, called Rancho del Refugio.

29 Ques. Please look upon and examine the two maps now shown to you, marked Exhibits No. 1 and No. 2, and filed herewith, and state whether those maps contain a correct delineation of the lands surveyed as they purport.

Ans. I have examined the two maps marked as Exhibits No. 1 and 2 and filed herewith. Those maps were made under my directions from field-notes of surveys made by me, and they are true delineations of the land shown to me by Castro and Murphy.

WM. J. LEWIS.

U. S. law agent present.

Sworn to and subscribed before me this 3d of March, 1853.

HARRY I. THORNTON, *Commissioner.*

Indorsed: No, 90. Martin Murphy, part of rancho de la Pastoria. Depo. of Wm. J. Lewis, taken before Commissioner H. I. Thornton. Filed in office March 3d, 1853. Geo. Fisher, secretary. Recorded in Ev., B., vol. 2. p. 624. Ex. G. F. Geo. Fisher, secretary.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such, having in my charge and custody the records of the late board of U. S. commissioners to ascertain and settle the private land claims in California, do hereby certify that the two preceding pages exhibit a true copy of a document filed in case No. 90, wherein Martin Murphy is claimant against the United States.

Given under my hand and official seal, at the city of San Francisco, Cal., this twenty-fifth day of April, 1856.

JOHN C. HAYS,
U. S. Surveyor Gen'l, Cal.

[SEAL.]

District court of the United States for the northern district of California.

THE UNITED STATES, appellants,
vs.
MARIANO CASTRO, appellee. } No. 97.

It is agreed that the first and second questions and answers of the within deposition of Wm. J. Lewis may be read in evidence, on the trial of the above-named action in this court, with the like effect as if the same were contained in a deposition of the witness taken in this action and in this court.

San Francisco, April 26, 1856.

A. GLASSELL,
Ass't U. S. Dis't. Att'y.

A. P. CRITTENDEN,
Att'y for Appellee.

Indorsed: Filed April 28, 1856.

JOHN A. MONROE, *Clerk*,
By W. H. CHEEVERS, *Deputy.*

Order to revive in name of M. T. P. de Castro, Ex'x, &c., as appellee.

In the district court of the United States for the northern district of California.

THE UNITED STATES, appellants,
vs.
MARIANO CASTRO, appellee. } No. 97.

Transcript from board of land commissioners, No. 257.

The death of Mariano Castro, the appellee, being suggested, and it being shown to the court that he left a will which has been duly admitted to probate by the probate court of the county of Santa

Clara, of which county the said appellee was a resident at the time of his death, and that by his said will he made his wife, Maria Trinidad Peralta de Castro, his sole legatee, devising to her all his estate, real and personal, and also appointed her sole executrix of his will; and that the said probate court has issued letters testamentary thereupon to the said Maria Trinidad Peralta de Castro, and that she has duly qualified and is acting as executrix: It is therefore now ordered by the court, on motion of A. P. Crittenden, attorney for said executrix, and upon consent of Wm. Blanding, esq., U. S. district attorney, appearing for the appellants, that the case be revived in the name of Maria Trinidad Peralta de Castro, executrix and sole devisee of Mariano Castro, deceased, as appellee, and that all further proceedings herein be conducted in her name.

March 9th, 1857.

Indorsed: Filed March 9th, 1857.

JOHN A. MONROE, *Clerk*,
By W. H. CHEEVERS, *Deputy*.

Deposition of L. B. Healey.

United States district court, northern district of California.

SAN FRANCISCO, *March* 20, 1857.

On this day, before Cutler McAllister, a commissioner of the
31 United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Lucien B. Healey, a witness produced on behalf of the United States in case No. 97, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 257 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: A. P. Crittenden, esq., for claimants, and Delos Lake, esq., for United States district attorney.

Questions by U. S. District attorney:

Before the examination begins the attorney for the claimant objects to the taking of any testimony in this case, on the ground that the appeal taken by the United States from the decision of the land commission having been ordered to be dismissed by the Attorney General of the United States, this case is not pending in the United States district court for the northern district of California.

Ques. 1. Your name, age, and occupation, and place of residence?

Ans. Lucien B. Healey; am 28 years of age, and am a surveyor; I reside in Santa Clara.

Ques. 2. Do you know the ranch commonly called "Pastoria de las Borregas?"

Ans. 2. I know the ranch.

Ques. 3. Look at the map marked "Exhibit A. C. McA.," attached to and made a part of your deposition, and state whether you recognize it as a map embracing the said ranch.

Ans. 3. I do recognize it as such ; I have known the lines by running them and by seeing them on record.

Ques. 4 Did you ever make a survey of this ranch ?

Ans. 4. No, sir ; I never did.

Ques. 5. State what you have done in reference to running lines on this ranch.

Ans. 5. At one time I ran a portion of the northern boundary on the salt marsh on its margin; also, in pursuance of my duties as county surveyor, I have run a portion of the southern boundary.

Ques. 6. Do you know whereabouts, on that grant, by referring to that map, is the Castro house?

Ans. 6. It is either the place marked Mariano Castro's, upon the map, or very near it.

Ques. 7. How long have you known that house to have been there?

Ans. 7. Since September, 1851 ; that was the first time I recollect seeing it.

Ques. 8. What was then its appearance as to age?

32 Ans. 8. I have a very indistinct recollection as to the appearance of that house at that time. I don't recollect whether it was a new house or an old one ; I think a portion of it was adobe, and a portion wood ; but I don't recollect distinctly about it.

Ques. 9. Who lived in that house when you first knew it?

Ans. 9. I understood it to be the family of Mariano Castro.

Ques. 10. Do you know the easterly boundary of the lands purchased of Castro by Murphy ?

Ans. 10. I do.

Ques. 11. Point out and describe that boundary on the map.

Ans. 11. A line commencing at a point marked M. M. 5, on the map, and marked as ——, running thence north 15° east 290, to a point on said map marked as the margin of the salt marsh.

Ques. 12. How far from the line is Murphy's house ?

Ans. 12. As near as I can judge, the distance designated on the map.

Ques. 13. How far southwesterly are the low hills, mentioned in Prado Mesa's grant, from the straight line on this map, marked as running from the point M. C. 4 to the point M. C. 5?

Ans. 13. Well I should ——; it is about a mile and a half or two miles.

Ques. 14. What is the direction of that range of hills ?

Ans. 14. I think the general course of these hills is about southeast and northwest.

Ques. 15. How far do those ranges of hills extend ?

(Question withdrawn.)

Ques. 16. Have you estimated the entire quantity of land embraced in the extreme lines of this map ?

Ans. 16. I never made a particular estimate of it, but I know it to contain between three and four leagues.

Ques. 17. If the line was run at the base of the range of low hills, on the southwesterly side, how much would that add to it ?

Ans. 17. It would add about one league.

Ques. 18. State the direction of the Santa Cruz mountains from this line of hills.

Ans. 18. Directly back of them, in a southwesterly direction.

Ques. 19. Do you know where the Prado Mesa ranch is, in relation to these mountains or hills?

Ans. 19. I have known it as the land embraced in the low hills on the northeast, between the Arroyo Capertino and the Arroyo San Antonio.

Ques. 20. How far is it from the nearest point of the base of the low hills to the tide-water marsh?

Ans. 20. I think it is about four miles.

LUCIEN B. HEALEY.

33 Sworn to and subscribed before me this 20th March, 1857.

CUTLER McALLISTER, *U. S. Com'r.*

[For map see original, page 83.]

Deposition of Edward Dale.

United States district court, northern district of California.

SAN FRANCISCO, *March 20th*, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Edward Dale, a witness produced on behalf of the United States in case No. 97, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 257 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: A. P. Crittenden, esq., for claimant, and Delos Lake, esq., for the U. S. district attorney.

Quetions by U. S. district attorney:

Ques. 1. Your name, age, occupation and place of residence?

Ans. 1. Edward Dale; 43; I am a farmer; I am living on the ranch in this case.

Ques. 2. Did you know Mariano Castro in his lifetime, and how long did you know him?

Ans. 2. I did; I knew him in the fall of 1850, I think in November, probably, till he died. I leased land of him.

Ques. 3. Did you know from Castro where he claimed the eastern boundary of his ranch to be?

Ans. 3. I did not.

E. DALE.

Subscribed and sworn to before me this 20th of March, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Deposition of Wm. D. Boone.

United States district court, northern district of California.

SAN FRANCISCO, *March* 20, 1859.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly au-
34 thorized to administer oaths, &c., &c., came William D. Boone, a witness produced on behalf of the United States in case No. 97, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 257 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: A. P. Crittenden, esq., for claimants, and Delos Lake, esq., for U. S. district attorney.

Qustions by U. S. district attorney:

Witness sworn on "voir dire."

Ques. Have you any interest in the matters involved in this case?

Ans. I bought forty acres of land, adjoining and easterly of Martin Murphy's land; I live on that land, and if the ranch is restricted to Martin Murphy's line, I shall lose ten acres of my land—about that. If the boundaries of this ranch are extended to the laguna, I shall have more land than if it is restricted to Martin Murphy's line.

Ques. Would you be benefited or injured by the confirmation of this claim to the full extent claimed?

Ans. I would be benefited.

Examination commenced:

Ques. 1. Did you know Mariano Castro in his lifetime? How long did you know him?

Ans. 1. I did; I knew him from the year 1850 until the time he died.

Ques. 2. Where did he reside? Did he reside on this ranch?

Ans. 2. When I first knew him he resided in San Jose. He built a house there on his ranch, and moved on to it; in the latter part of 1850 or 1851 he moved upon the ranch. He may have lived upon the ranch before I came here.

Ques. 3. Do you know whether there was a house upon the ranch belonging Castro before you say he built his house upon it in 1850?

Ans. 3. There was no house upon it before that time, belonging to him, that I ever saw.

Ques. 4. For what purpose did Castro occupy the ranch?

Ans. 4. He cultivated some of it; he had cattle on it.

Ques. 5. How long have you resided on your land where you do now?

Ans. 5. I have resided where I do now since November, 1849. I came to California in that year.

Ques. 6. Do you know from Castro where he claimed his eastern boundary to be?

Ans. 6. No; I could not say that I ever knew from Castro.

35 Ques. 7. Do you know of any landmarks of a public nature designating the easterly boundary? and if so, state the character of those landmarks.

Ans. 7. The first survey that I ever saw on this land was previous to Martin Murphy's purchase. The survey was made by a surveyor whose name I don't recollect. He had red hair. The line he ran is the one marked on the map north 15 deg. E. 290. He blazed the first tree he came to on running this line, and marked on the east side "public on the east," and on the west side of the tree, "Castro on the west." I saw stakes on that line marked in the same way. I don't know who employed the survey—whether Castro did it or not.

WILLIAM D. BOONE.

Subscribed and sworn to before me this 20th March, 1857.
CUTLER McALLISTER, *U. S. Comm'r.*

Indorsed: Filed March 28th, 1857.
JOHN A. MONROE, *Clerk,*
By W. H. CHEEVER, *Deputy.*

Opinion of the Hon. Ogden Hoffman, confirming claim.

THE UNITED STATES *vs.* MARIANO CASTRO. } No. 97.

The claim in this case was confirmed by the board.

The genuineness of the grant is not disputed. The only question raised is whether the grantee shall take the whole tract which Suñol deposes he measured off to him, or shall be confined to the quantity mentioned in the grant. By the espediente it appears that the land was originally applied for by Jose Estrada, in 1840. In this petition no boundaries are mentioned; but the place in Santa Clara, known as La Pastoria, is asked for, with the understanding that the said tract should "consist of two leagues, a little more or less."

On this petition various informes were obtained, and on the 27th February, 1841, Gov. Alvarado directed the espediente to be passed to the actual trustee of the establishment of Santa Clara, the party interested, to annex thereto a design of the tract asked for.

This diseno appears to have been presented, for it is found in the espediente. In the decree of concession Estrada is declared the owner in property of the land called Pastoria de las Borregas, bounded by the land of Don Jose Peño, by that of Don Prado Mesa, and La Punta del Robla, to the extent of two leagues, as shown by the annexed diseno.

In the grant the land is described in the same terms; but in the second condition it is stated "that the land of which mention

36 is made is of the extent of two square leagues, a little more or less;" and the judge who shall give the possession is directed to cause it to be measured according to the ordinances, the surplus thereof to be left to the nation for its convenient uses.

The third condition directs, in the usual form, that the judge giving the judicial possession shall mark out the boundaries, on the limits of which the grantee shall put, besides the landmarks, some fruit or other useful trees.

It appears by the testimony of Antonio Suñol, that in 1842, acting as sub-prefect, and in pursuance of an order of the governor, he measured the land of which the grantee was in possession; that he made a written report of his proceedings in the matter, which he transmitted to the government, and recorded them in the book of proceedings kept by him as sub-prefect.

Neither the report nor the book can now be found, and we are compelled to resort to parol testimony to ascertain what were the measurements made by Suñol.

He swears that subsequently, (but when he does not state,) he accompanied a surveyor to the land and pointed out to him the limits which he had just established, although he did not see the actual survey of the land. On being shown a map or sketch of the tract, he states that, so far as he saw the land, the sketch appears to be correct, and he proceeds to describe the lines run by him when he gave the possession. He appears to have run five lines, the first two of which are not marked on the map, and would seem not to have been intended as boundaries. The first was run at the eastern end of the ranch, parallel to the creek of Las Yeguas, but at some distance from it; and the second nearly at right angles to it, and passing from the house of Robles through the centre of the rancho to the laguna on the western extremity. From this laguna he run a line to the bay on the north, and another to the edge of the chemisal on the southwest; and from the end of this latter a fifth line was run to Arroyo de San Jose, as shown on the map.

On comparing the tract of land which appears to have been intended to be included within these boundaries with indications of the diseno, it is found impossible to identify the two tracts. The diseno is drawn with extreme *wideness.* No boundaries seem to be delineated, and the only objects which I have been able to recognize are four lines, two of which are marked as caminos or roads; the third as the Arroyo de las Yeguas, and the fourth as the estero or bay.

The laguna is not laid down, nor is the creek of San Jose, which Suñol seems to have taken for a boundary, but the word Roblar is inscribed on the diseno apparently at a place near where, by the survey since made, the lands of Prado Mesa are situated. I have
37 not been able to find on either of the disenos, on the map, or in the testimony of any witness, any information as to the situation of the lands of Peña, by which, as the grant mentions, the lands of the claimant are bounded.

From an endorsement on the original grant, signed by Gov. Micheltorena, and dated Feb. 14, 1844, it appears that, by a resolution of the departmental assembly of that date, the concession to the Indian of Santa Clara, called Ynigo, of the land then occupied

by him was ordered to be issued. This land is comprised within the limits of the claimant's rancho as measured by Suñol in 1842.

The board therefore directed that the lands of Ynigo, as well as those sold by the claimant to Martin Murphy, and which have been separately confirmed to him, should be excepted from the lands confirmed in the case.

The qestion then arises, to what extent of land is the claimant entitled? It appears in evidence that the lands embraced within the measurement of Suñol are from three to four leagues in extent.

It cannot be contended that the grant is for a tract of land by metes and bounds. As already stated, the grant merely mentions the names of two persons on whose lands the tract borders; and the third boundary, if it can be called such, is a point and not a line. The diseno fails to afford any intelligible indication whatever as to the limits of the tract intended to be granted.

It is clear, therefore, that under the grant the claimant would be entitled to two leagues.

In the case of the United States *vs.* Fossat, the Supreme Court refused to attach any significance to the words "more or less," or to extend the grant beyond the quantity clearly expressed. Yet, in that case three boundaries were distinctly mentioned in the grant, and the fourth was supposed by this court to be clearly indicated by the diseno, the petition, and the name of the place granted. The excess within the boundaries was only a fraction of a league—the usual unit of measurement.

Under this ruling of the Supreme Court, it is of course impossible to construe the grant in the present case as conveying more than two leagues.

To confirm, then, to the claimant a tract of 3½ leagues in extent on the ground that it was measured off to him by the juridical officer, would be to attribute to that officer the granting power.

The measurement made by him seems to have been to some degree loose and informal. No record of the act of giving judicial possession, such as is often attached to the espedient, appears to have been made. He recorded his proceedings, he says, in his book; but the nature and formality of that record does not appear.

38 It is not shown that the lines run by Suñol were measured by him. Their length is not given, nor does he appear to have estimated the quantity of the land of which he gave the possession. The lines, moreover, do not enclose any tract, for the second appears to have been run nearly through its centre, though it seems probable that he intended the estero to be the northern boundary. So far as appears either from the grant, the diseno, or the evidence in the case, the land was laid off at the mere discretion of the juridicial officer; nor is it apparent why he might not have fixed the boundaries in any other manner, or included within them a far greater quantity of land.

I cannot discover that in his location of the land he has attempted to ascertain it by reference to the boundaries of Don Jose Peña, or to the point called "Punta de Roblar," both of which are called for

as boundaries in the grant; and it is even suggested that the only remaining boundary called for, viz: the land sof Don Prado Mesa, has not been observed.

To affirm that under a grant of this kind, which, from its own indefiniteness, as well as by the law, as laid down by the Supreme Court, must be construed to convey only two leagues, the claimant is nevertheless, by virtue of a possession given by a juridicial officer, such as that given in this case, to be allowed a tract from three to four leagues in extent, is, as before observed, virtually to recognize in that officer a power to grant lands, rather than measure and locate them, and to ascertain the sobrante.

I therefore think that there should be confirmed under this grant only two leagues of land, to be laid and measured within the boundaries mentioned in the grant—reference for the more precise ascertainment of said boundaries to be made to the diseno accompanying the espediente, and to the deposition of Suñol, and the map annexed thereto, on file in this case—said two leagues to be surveyed and located after first ascertaining and measuring off the lands granted to the Indian Ynigo. For a description of which last-mentioned lands, reference to be had to the opinion of the board of commissioners on file in this case, and to the note made by Gov. Micheltorena on the back of the original grant herein. It being understood that the said lands so granted to the said Indian shall first be measured off, and then the quantity of two leagues shall be measured within the boundaries above mentioned, and the said quantity of two leagues is hereby confirmed to the claimant, excepting, nevertheless, from said confirmation the lands conveyed by him to one Martin Murphy; which lands have been separately confirmed to the said Murphy, and for a description of said lands of Martin Murphy reference is to be had to two deeds executed by the claimant to said Murphy, and filed in case No. 90 on the docket of the board of commissioners.

Indorsed: Filed October 26th, 1859.

W. H. CHEEVERS, *Clerk.*

39 *Decree.*

At a stated term of the United States district court for the northern district of California, continued and held at the court-house in the city of San Francisco, on Wednesday, the 23d day of November, A. D. 1859.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES, appellants,
vs.
MARIA TRINIDAD PERALTA DE CASTRO, executrix of the estate of Mariana Castro, deceased, appellee.

This cause having been brought on to be heard on appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California under the act of Congress ap-

proved 3d March, 1851, upon the transcript of the proceedings and the decision of the said board, and upon the further evidence taken in this court by order of the court, and counsel for the respective parties having appeared and been heard, and this court having considered the evidence and the argument of the counsel thereupon, and being of the opinion that there is error in the decision of the said board of commissioners, do now order, adjudge, and decree that the said decision of the board of land commissioners be, and the same is hereby, reversed and set aside.

And it is further ordered, adjudged, and decreed that the title of the said claimants to the land described in said transcript is valid, and the same is hereby confirmed to the extent and quantity of two square leagues, subject, however, to the exceptions and reservations hereinafter mentioned and contained.

The land of which confirmation is hereby made is contained within the boundaries of the land called Pastoria de las Borregas, bounded by the land of Don Jose Peña, by that of Don Prado Mesa and La Punta del Roblar, to the extent of two leagues, provided said quantity be contained within said boundaries; and if there be less than said quantity of two leagues within said boundaries, then such less quantity is hereby confirmed to the said claimant, subject to the reservation and exceptions aforesaid.

Reference for more precise ascertainment of said boundaries to be made to the diseno accompanying the espediente, and to the deposition of Suñol, and the map annexed thereto, on file in this case, said two leagues to be located and surveyed after first ascertaining and measuring off the land granted to the Indian Ynigo, for a description of which last-mentioned lands reference to be had to the opinion of the board of commissioners on file in this case, and to the note made by Gov. Micheltorena on the back of the original
40 grant herein, it being understood that the said lands, so granted to said Indian shall be first measured off, and then the quantity to two leagues shall be measured within the boundaries above mentioned, and the said quantity of two leagues is hereby confirmed to the claimant, excepting and reserving, nevertheless, from said confirmation the lands conveyed by Mariano Castro, in his lifetime, to one Martin Murphy, which lands have been separately confirmed to the said Murphy, and for a description of said lands of Martin Murphy reference is to be had to two deeds executed by said Castro to said Murphy, and filed in case No. 90 on the docket of the said board of commissioners.

OGDEN HOFFMAN, *District Judge.*

Endorsed: Filed Nov. 23, 1859.

W. H. CHEEVERS, *Clerk.*

Order granting appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the courthouse, in the city of San Francisco, on Tuesday, the twenty-fourth

day of January, in the year of our Lord one thousand eight hundred and sixty, for the trial of land cases.

Present: The Honorable M. Hall McAllister, circuit judge.

THE UNITED STATES *vs.* MARIANO CASTRO. } No. 97. L. C. 257.

In this case an application of T. R. Wise, esq., acting U. S. attorney, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court, rendered in said cause at the June term, 1859, be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

M. HALL McALLISTER,
Judge Circuit Court U. S. Dis. of Cal.

Indorsed: Filed January 24th, 1860.
W. H. CHEEVERS, *Clerk.*

I, W. H. Cheevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the foregoing and hereunto annexed pages, numbered from 1 to 104, inclusive, contain a full, true and correct transcript of the record on file from the board of U. S. land commissioners, together with the pleadings, depositions, orders, opinions, and decree filed in this office in the case entitled the United States, appellants, *vs.* Mariano Castro, appellee.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 26th day of January, A. D. 1860, and of our independence the eighty-fourth.

[SEAL.] W. H. CHEEVERS, *Clerk.*

Filed 12th November, 1860.

[Here follows map, page 40.]

41 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Friday, the 11th day of November, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES *vs.* MARIA TRINIDAD PERALTA DE CASTRO. } No. 97.

In this case, on the application of Mr. S. O. Houghton, counsel for claimant, made in open court, it is ordered by the court that an appeal in behalf of the claimant from the final decision of this court,

rendered in said cause at the June term, 1859, be, and the same
42 is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions and proceedings in the said cause be sent to the Supreme Court of the U. S. without delay.

THE UNITED STATES OF AMERICA, *Northern District of California, ss:*

I, George C. Gorham, clerk of the circuit court of the United States northern district of California, and ex officio clerk of the district court of the United States northern district aforesaid, do hereby certify that the foregoing is a true and correct copy of the original order, granting appeal in behalf of claimant, made by the district court of the United States northern district aforesaid, in the above-entitled cause, viz: the United States *vs.* Maria Trinidad Peralta de Castro, on the eleventh day of November, A. D. 1864, and now on file and of record in this court.

Witness my hand and the seal of said district court this twentieth day of October, A. D. 1865.

[SEAL.] GEO. C. GORHAM, *Clerk*,
By DAN'L T. SULLIVAN, *Deputy.*

43 THE UNITED STATES OF AMERICA:

To the United States of America, by Delos Lake, esq., U. S. district attorney, for the northern district of California:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the city of Washington, at a term thereof to be holden on the first Monday of December, A. D. 1865, pursuant to an order of appeal granted on the 11th day of November, A. D. 1864, in open court, by the district court of the United States for the northern district of California, in a certain suit wherein the United States is plaintiff and Mariano Castro, revived in the name of Maria T. P. de Castro, is defendant, said appeal having been granted in favor of said defendant, to show cause, if any there be, why the decision appealed from should not be modified and corrected, and speedy justice done to the parties in this behalf.

Witness my hand and seal, at San Francisco, this 29th day of May, A. D. 1865.

[SEAL.] OGDEN HOFFMAN, *Dist. Judge.*

44 Due service of the within is hereby acknowledged this 29th day of May, A. D. 1865.

DELOS LAKE, *U. S. Att'y.*

UNITED STATES OF AMERICA, *State of California, ss:*

S. O. Houghton, being sworn, says he is a white male citizen of the United States; that he is competent to be a witness in the above-entitled cause; that on the 29th day of May, 1865, at the city and county of San Francisco, State of California, he personally served upon Delos Lake, a full, true, and correct copy of the annexed and

foregoing citation, by handing to, and leaving with said Lake such copy; that said Lake was at said time United States district attorney for the northern district of California; that he saw said Lake sign the annexed admission of service thereof, at the date thereof, and the signature of said Lake thereto is genuine.

S. O. HOUGHTON.

Subscribed and sworn to before me Oct. 28th, 1865.
[SEAL.] GEO. C. GORHAM, *U. S. Commissioner.*

45 United States district court, northern district Cal.

THE UNITED STATES
vs.
MARIANO CASTRO. } No. 97.

I, Willam H. Sharp, late United States district attorney for the northern district of California, hereby certify and admit that I was present in court on the eleventh day of Nov., A. D. 1864, when the order allowing an appeal herein to the Supreme Court of the United States was granted by his Hon. Judge Hoffman.

WM. H. SHARP.

Dated San Francisco, October 26th, 1865.

46 In the Supreme Court of the United States. Appeal from the district court of the United States California, in and for the northern district.

THE UNITED STATES, respondent,
vs.
MARIANO CASTRO, appellant.

It is hereby stipulated that the above-entitled cause be submitted to the Supreme Court of the December term thereof 1865, on the printed briefs prepared by the undersigned for the respective parties hereto, subject to the approval of the Attorney General of the United States.

And it is further stipulated that the transcript heretofore filed in the said Supreme Court, on which the appeal heretofore taken by the United States was dismissed, and now on file with the clerk of said court, shall constitute the transcript on this appeal.

DELOS LAKE, *U. S. Att'y.*
W. T. WALLACE, *Att'y for Appellant.*

47 I, Geo. C. Gorham, clerk of the circuit court of the United States in and for the tenth circuit, and ex officio clerk of the district court of the United States in and for the northern district of California, do hereby certify the annexed and preceding 6 written and 40 consecutively printed numbered pages and lithograph copies of Exhibits, exhibits and is a full, true, and correct transcript of the records on file in the clerk's office of said district court from the board of land commissioners, together with the depositions, exhibits,

orders, opinions, and decrees, citations and files, filed in the office of the clerk of said district court, pertaining and relating to the case No. 97, entitled Maria Trinidad Peralta de Castro (successor in interest of Mariano Castro) *v.* The United States, and the same constitutes a full, true, and correct transcript on appeal to the Supreme Court of the United States.

In witness whereof, I have hereto set my hand and affixed the seal of said district court this 28th day of October, 1865.

GEO. C. GORHAM, *Clerk*,
[SEAL.] By DAN'L T. SULLIVAN, *Deputy*.

48 United States district court, northern district of California.

THE UNITED STATES }
vs.
MARIANO CASTRO. }

CITY AND COUNTY OF SAN FRANCISCO. *ss:*

R. C. Hopkins, of said city and county, being duly sworn deposes and says that for the ten years last past he has had charge of the Spanish archives in the office of the United States surveyor general for California; that he is familiar with the same and conversant with the Spanish language; that he has read the depositions of Antonio Suñol taken in the course of the proceedings in this cause before the land commissioners for the settlement of private land claims in California; that at the time of the taking of said depositions the papers hereinafter referred to and hereto attached were not among the archives in the surveyor general's office, but were among the archives belonging to and at the pueblo of San José; that in 1858 the present Secretary of War, Edwin M. Stanton, caused the archives lodged at San José to be removed to the city of San Francisco and placed
49 in the custody of the surveyor general; that such of said archives as were entirely local in their character were returned to the county authorities of San José, and the balance remained in the custody of the surveyor general; that among the documents so brought from San José and retained by the surveyor general were found the papers referred to in the depositions of said Antonio Suñol, traced copies of which are hereto attached, and also correct translations thereof; that said papers were not discerned until after this cause had been adjudicated by the district court.

Deponent further says that he is well acquainted with the respective handwritings of Manuel Jimeno, former secretary of state for the department of California, and that of Antonio Suñol, who was in 1843 sub-prefect of the district of San José; that the document dated "Monterey, 28 de Obe. de 1843," is in the handwriting of said Manuel Jimeno, and that his signature thereto is genuine; and that the other of said documents hereto attached is in the handwriting of Antonio Sunol, and the same was traced by deponent from a page of a record kept by said Sunol of the correspondence and proceedings of the sub-

prefecture under his charge; that said record from which said
50 tracing was made is of unquestionable genuineness and authenticity.

R. C. HOPKINS.

Subscribed and sworn to before me this 28th day of October, A. D. 1865.

DAN'L T. SULLIVAN, *U. S. Comm'r.*

51 SRIA. DEL GOB'NO DEPARTAMENTAL DE CALIFORNIA.

El exmo. senor gobernador ha dispuesto que V. proseda a la medicion del terreno que se le ha consedido a D'n Fran'co Estrada, tomando un condel de a cincuenta varas, y compesando por el principal lindero de los que manifiesta el titulo respectivo, y que con el nauvro de cordeles dara v cuente. Como tambien una noticia de los terrenos baldios g'e se hallen en las inmediaciones del mencionado terreno que se ha de medir haciendo v. silacion al espoesado D. Francisco Estrada y al indigena al tiempo de proceder a la medicion.

Y en complimento a decho Sup'or desposicion lo digo a U. h'a el objeto que indico——

Dios—

52 En complim'to de lo despaesto por el exmo. sor. governador q'e con f ha. 28 del Pasado 8 bre se sirvio vs dirigir a esta sub-prefectura, e pusado en persona a medir el terreno perteneciento a D'n Fran'co Estrada, elamado a d'ho. Estrada y ael Yndijcar Ynigo, con dos testegos para q'e presenccaran las medegos y resulto q'e de lonjitude hag doscientos guarenta y cinco cordeles de a cincuento varas cordel y de latitud por la cabesera del norte ochen'ta cordeles y por la haste del sur ciento cuarento y cinco dejanda por su parte del oriente un pedaso de terreno como de trescientas varas por ser satitrosa e unetal a el pasteadero; por la parte del possiente un hueco como de tres cuartos de legua mas o menos de lerreno en favor de la mision— Escuan'te pardo informas en complim'te de la sitada horden D. & Sor. Scrio. D'n Man'l Gimeno.

53 y Libertad Monterey 28 de Obre de 1843.

MAN'L JIMENO.

S. sub-prefect del partedo de S'n Jose.

54 SECRATERIA OF THE DEPARTMENTAL GOVERNMENT OF CALIFORNIA.

His excellency the governor has resolved that you proceed to the measurement of the *of the* lands that have been conceded to Don Francisco Estrada, taking a cord of fifty varas in length, commencing at the principal boundary set forth in the title referred to, and that you shall give an account of the number of cordeles, and also a notice of the vacant lands that are found in the neighborhood of the lands to be measured, citing the said Don Francisco Estrada and the Indian ——— to appear at the time when said measurement is made.

And in fulfilment of the said superior's resolution I say this to you for the purpose indicated..

God and liberty. Monterey, October 28th, 1843.

MAN'L JIMENO.

To the sub-prefecto of the partedo of San Jose.

55 NOVEMBER. —.

In fulfilment of the order of his excellency the governor, which, under date of the 28th of *of* last October, you were pleased to forward to this sub-prefectura, I went in person to measure the lands pertaining to Don Francisco Estrada, summoning the said Estrada and the Indian Ynigo, with two witnesses, in order that they might be present at the measurement, and it resulted that in length there are two hundred and forty-five cordeles of fifty varas to the cordel, and in width at the upper part of the north, eighty cordeles, and at the part of the south, one hundred and forty-five, leaving on the part of the east a piece of land of about three hundred varas, the same being saline and useless for pasturage; on the west side a piece of land of about three-quarters of a league in favor of the mission.

This is all I have to report in fulfilment of the said order.

To the secretary, Don Manuel Jimeno.

I hereby certify the foregoing to be correct translations of the originals, which were traced by myself from the records on file in the office of the U. S. sur. gen'l.

R. C. HOPKINS,

Keeper of Spanish Archives in office of U. S. Sur. Gen'l.

Oct. 1865.

Filed November 24, 1865.